



City of Rockville

MEMORANDUM

April 17, 2009

TO: The Mayor and Council

FROM: Debra Yerg Daniel, City Attorney 

SUBJECT: City Attorney's Office's Estimated FY 2010 Budget and Transition Plan

I. Introduction

As you know, FY 2010 will be the first year the City Attorney's Office ("CAO") will be an in-house department in the City of Rockville. I have analyzed the types of legal services needed by the City as well as the total costs for legal services paid by the City for FY 2007, FY 2008 and FY 2009 to date and have come up with an estimated budget and transition plan that, in my opinion, is realistic for FY 2010. I have based my analysis in large part on my assessment of the City's legal needs through meetings with directors as well as outside counsel, my first-hand experience of the ongoing workload in the office, and my past experience running a legal department. As part of my analysis, I have taken into consideration the varying types of legal work generated by the departments in the City as well as the volume of work generated over the last few years. In addition, this analysis incorporates necessary transition and set-up costs designed to make the CAO an efficient and effective addition to the City.

I have concluded that the most efficient and cost-effective model for the CAO is to bring a majority of the City's legal support needs in-house as soon as possible. I have further concluded that, in order to do this, the CAO will need two full-time in-house assistant city attorneys and a full-time legal secretary in addition to the existing City Attorney and paralegal positions. My estimated FY 2010 budget and transition plan are based on these conclusions. This analysis is informational only and is intended to provide you with my professional opinion of what I have concluded is needed in terms of staffing and budget in FY 2010 to establish a successful CAO.

II. Prior Fiscal Years

A. Scope of Legal Services

In order to fully understand the scope of legal services required by the City, it is important to be aware of all the legal services that have been provided to the City in the past few years.

As a full-service City, the legal services the City requires are wide-ranging and comprehensive. Legal services are needed by every department in the City including:

1. Mayor and Council's Office
2. City Clerk's Office
3. City Manager's Office
4. Community Planning and Development Services (including Inspection Services)
5. Finance (including Purchasing)
6. Human Resources
7. Information and Technology
8. Public Works
9. Recreation and Parks (including Community Services)
10. Rockville City Police (including Code Enforcement)

Issues requiring legal support include everything from drafting leases and easements to providing advice to Boards and Commissions to code enforcement to environmental matters and beyond. Based on my research, in the past couple of years, the City has utilized the services of up to 30 different legal professionals per year (attorneys, paralegals, etc.) on issues covering many different legal specialties including, but not limited to:¹

1. Zoning and Planning (including legal support for master plans and all matters that go before the Planning Commission, Board of Appeals, and Historic District Commission)
2. Personnel Issues (including grievances, EEOC, workers' compensation, and LEOBR)
3. Employee Benefits (including ERISA, HIPAA, pension, and post-employment benefits)
4. ADA Issues (related to City projects, complaints and recreation programs)
5. Labor Relations (including union negotiations and arbitrations)
6. Public Works (including easements, licenses, environmental and transportation issues)

¹ This list is not meant to be exhaustive but merely illustrative of the amount and breadth of work supported by the CAO.

7. Recreation and Parks (including forest conservation, recreation projects and programs, hometown holidays)
8. Code Enforcement (property maintenance, building code, and zoning)
9. Stormwater Management (easements and enforcement)
10. Bond Financing (issues related to bond issuance)
11. Administrative Appeals (appeals from decisions by Mayor Council, City staff, and City's Boards and Commissions)
12. Election, Public Information, and Open Meetings Issues
13. Creation of Non-Profit Foundations
14. Legislation (drafting ordinance revisions, resolutions)
15. Landlord Tenant Issues
16. Trademark and Copyright Issues
17. Telecommunications Issues (including cable franchises)
18. Procurement Issues
19. Construction Law Issues

In addition, attorneys in the CAO are expected to attend meetings of and provide legal support to the Mayor and Council and all of the City's Boards and Commissions, as necessary. The CAO also provides general advice and assistance to staff on a daily basis.

B. Total Amount of Legal Fees

In order to properly compare the estimated FY 2010 budget to prior fiscal year budgets, it is important to know the total amount of money spent by the City on legal services in prior fiscal years. Because some legal services were paid from funds other than those attributed to the CAO's budget, not all of the legal services costs are captured in the amounts set forth in the section titled "City Attorney's Office" in prior fiscal year budgets. I have analyzed the total amount spent by the City on legal services for FY 2007, FY 2008 and FY 2009 to date and have attached summaries of my findings on Attachments A, B, and C, respectively.

On the attachments, I have provided a breakdown of the total amount billed from outside counsel, a breakdown of how much of that total amount was dedicated to the Town Center project, and the total amount of legal fees spent minus the amount dedicated to Town Center. In addition, I added a line item of the CAO's expenses related to salaried employees as well as other costs in running the CAO's office at the City. The last line on each attachment provides the total amount spent in legal fees both with and without the amount spent exclusively on the Town Center. These amounts are as follows:

Fiscal Year	Total Amount for Legal Services	Town Center Fees	Total Amount for Legal Services minus Town Center Fees
2007	\$1,125,801	\$193,278	\$932,523
2008	\$1,158,828	\$154,272	\$1,004,556
2009 (through February 2009)	\$1,090,490	\$348,146	\$742,344
2009 (estimated through end of FY 2009)	N/A	N/A	\$1,112,344 ²

Since the amount spent on legal services dedicated to the Town Center project has not been paid directly out of the CAO's budget, I have used the numbers in the last column representing the total amount paid for legal services minus the Town Center fees in determining an appropriate budget for FY 2010.

III. Estimated FY 2010 Budget

A. Staffing for the CAO

Based on my analysis of the City's legal support needs, the CAO needs two additional full-time in-house attorneys and a full-time legal secretary.³ These positions would be in addition to the City Attorney position and the currently filled paralegal position. This assessment is based both on the amount of work generated by the City's departments as well as the type of work generated.

Generally, a majority of the City's legal support needs can be divided into five main categories: 1) transactional (leases, easements, licenses, and other agreements); 2) land use (planning, zoning, environmental, transportation); 3) litigation-oriented issues (procurement, personnel, code enforcement, landlord tenant, administrative appeals); 4) legislation (preparation of ordinances and resolutions); and 5) general legal advice (election law, open meetings compliance, public information issues, interpretation of city, state and federal laws). Given the breadth of the general specialties required, two additional in-house attorneys with backgrounds

² This amount equals the amount spent through February of 2009 (\$742,344) plus \$75,000 per month for legal fees for the remainder of the fiscal year (which is approximately the average amount spent per month in FY 2008 and FY 2009 for legal fees) plus \$70,000 which is approximately the amount currently allocated for salaries for the rest of FY 2009.

³ The full-time legal secretary position will replace the part-time temporary administrative position in the CAO's FY 2009 budget.

in these areas that are complementary would, along with the City Attorney, be able to provide in-house support for a majority of the legal work generated by the City.

Not only will the City benefit in the long run from in-house attorneys who are familiar with the City's laws and processes but there are additional more intangible benefits such as more convenient access to legal support and quicker turnaround times on assignments. In addition, in-house attorneys, focused exclusively on the business of the City, will be in a better position to address issues preventatively and will be able to take on special projects such as reassessing existing processes and procedures among other things.

It is important to stress that without two additional in-house attorneys, the CAO will not be able to fulfill its mission of becoming a fully functioning in-house legal department since a significant amount of legal work will still need to be done by outside counsel. As City staff's memorandum to the Mayor and Council dated July 28, 2008, aptly concluded, the City needs two in-house attorneys to perform the legal work generated by the City. However, the staff report left open the question of whether the City Attorney would report directly to the Mayor and Council. As such, staff's analysis at that time did not take into account the additional workload on the City Attorney who will now be functioning as an in-house department head responsible for managing the department including managing both in-house staff and outside counsel, as well as managing the departmental budget, and with the added responsibility of directly reporting to and serving the Mayor and Council.

When considering the staffing needs of the CAO, it is important to keep in mind that the City is seeking to create a new in-house legal department. The question is what type of department does the Mayor and Council envision? Is the Mayor and Council seeking to maintain essentially the same level of service it currently has and still utilize a significant amount of outside legal support or is the Mayor and Council seeking to create an in-house legal department that can manage a majority of the City's legal needs in-house? In my professional opinion, the most cost effective model, and the one that will best serve the City in the long run, is to bring a majority of the City's legal support needs in-house and, to do so, the City will need to have two in-house assistant city attorneys. Moreover, I strongly recommend that the City seek to establish this in-house model now rather than in piece-meal fashion by hiring one in-house assistant city attorney now and waiting a period of time to hire a second in-house assistant city attorney. Based on my experience to date in the CAO as well as my past experience managing a similar sized legal department, it is clear to me that, with only one additional in-house attorney, a significant amount of outside legal services will still be needed, and the cost benefit of an in-house assistant city attorney far outweighs paying for outside counsel.⁴ In other words, the longer the City takes

⁴ It appears from the invoices I have reviewed that the cost per hour for outside counsel in FY 2008 ranged from approximately \$300/hour to upwards of \$450/hour depending on the legal support provided. Taking a conservative \$350/hour for comparison purposes, the cost of an in-house attorney at close to top of grade would cost approximately \$150,000/year (including benefits) while outside counsel would cost

to establish a fully-functioning in-house legal department, the longer the City will be paying higher outside counsel fees for the same work.

In addition to in-house attorneys, the City will still need to engage outside counsel for certain matters since the City requires legal support in very specialized areas of law including, but not limited to, employee benefits, telecommunications, ADA issues, bond financing issues, creation of non-profits, EEOC actions, and labor relations.⁵ While issues related to these areas of law come up on a regular basis, they do not consist of a large portion of the City's needed legal support. Given that these areas of law require specialized expertise in federal and/or state law, the City would be best served by continuing to utilize outside legal experts in those areas.⁶

Finally, the CAO will require a full-time legal secretary to support the three proposed attorney positions and the paralegal position. Based on the total budget currently allocated to the CAO,⁷ all of the in-house staffing needs I have identified will be fully funded in the proposed FY 2010 budget subject to the approval of the Mayor and Council.

B. Cost of Transition

For the CAO, FY 2010 will be an anomaly. This is because FY 2010 will be a transition year. By its very nature, a transition costs more because it entails paying twice as much for the same service for a period of time. Specifically, in order to have a successful and smooth transition, the City will be paying for outside counsel services as well as in-house services for a period of time. This transition is necessary in order to allow for an orderly transition of work from outside counsel to the new in-house attorneys. In addition, transitioning from outside counsel to an in-house model requires budgeting for those costs that were included in the outside counsel fees including, but not limited to, secretarial functions, increased on-line legal researching capabilities, supplies, etc.

In estimating a budget for the amount of legal fees needed for FY 2010 including the necessary transition costs, I have calculated the average monthly amount paid for legal services (minus the Town Center fees) for FY 2008 and FY 2009 to date. That amount equals approximately

\$350,000 for only half the amount of work (a normal FTE equals 1950 hours/year—even for 1000 hours—half a work year—at \$350/hour, outside counsel would cost \$350,000).

⁵ Again, this list is not intended to be exhaustive.

⁶ With two in-house assistant city attorneys, I anticipate that even some of this work will be able to be brought in-house.

⁷ This includes the \$708,500 set forth in the FY 2010 Proposed Operating Budget and an additional \$200,000 the City Manager has arranged to provide to the CAO.

\$75,000/month.⁸ Based on that calculation, I estimate the following transitional budget for contractual legal services in FY 2010:

Months in FY 2010	Amount for outside legal services per month	Total amount for outside legal services
July and August 2009	\$75,000	\$150,000
September and October 2009	\$55,000	\$110,000
November and December 2009	\$35,000	\$70,000
January through June 2010	\$15,000 ⁹	\$90,000
Estimated Total for outside legal services for FY 2010	N/A	\$420,000

This estimate allows for a stepped-down transition of work from outside counsel to in-house attorneys. Based on the total budget allocated to the CAO, all of the office needs I have identified and approximately \$200,000 out of the \$420,000 needed for contractual services are currently accounted for in the proposed FY 2010 budget. Thus, in my opinion, the CAO proposed FY 2010 budget for contractual services is likely under budgeted by approximately \$220,000.¹⁰ However, this amount is only an estimate and provided to you for informational purposes only. If it turns out that this estimate is correct, the CAO will need to seek additional funding sometime during FY 2010.

It is important to remember that this estimated amount includes transition costs that would not carry over into FY 2011. If the \$15,000 estimated per month for January through June 2010 hold true through FY 2010, and barring any unforeseen legal needs, the City should begin to see some savings in the CAO budget starting in FY 2011 while, at the same time, be receiving an increased level of service.

⁸ I added \$881,534.34 (FY 2008 total legal fees minus Town Center fees) and \$621,532.27 (FY09 total legal fees minus Town Center fees to date) and divided by 20 (12 months in FY 2008 and 8 months in FY 2009) to get \$75,153.33 for legal fees per month. See Attachments C and D.

⁹ This amount—\$15,000—represents approximately the average amount spent per month by the City on legal services for the specialized areas of law identified above as still needed to be provided for by outside counsel.

¹⁰ With this additional \$220,000, the total CAO proposed budget for FY10 would come to \$1,128,500. This amount is approximately \$16,000 (or approximately 1.4%) more than the amount estimated for Total Amount for Legal Services minus Town Center Fees for FY 2009 as outlined above.

C. Other Factors

In estimating the CAO's FY 2010 budget, I have made certain assumptions. First, I have assumed that the Town Center legal costs will continue to be paid from sources outside of the CAO budget. If the Town Center legal costs are expected to be paid from the CAO's budget, a significant amount of money will need to be added to the contractual services line item.

Second, I have assumed that the City will continue to participate in the Montgomery County Self Insurance Fund. Under this Fund, all workers' compensation claims and tort claims filed against the City are handled by Montgomery County's Office of the County Attorney. Currently, the CAO does not have any involvement in those cases beyond forwarding the cases to the County Attorney's Office. If the City were to change the way it is insured or change the way in which these claims are handled, it could significantly impact the workload and budget of the CAO.

Third, I have assumed that I will be able to hire two full-time assistant city attorneys. If, for some reason, I am not authorized to hire a second full-time assistant city attorney, the CAO's budget will need to be adjusted to increase the amount budgeted for outside counsel fees to cover the work that would be handled by that in-house attorney.¹¹ In addition, I have assumed that the hiring of the two full-time attorneys will take place by the beginning of FY 2010, if not earlier. The transitioning of work from outside to in-house will depend in large part on how soon I am fully staffed.

Finally, I have assumed that there will be no major legal catastrophe in FY 2010. In other words, I have estimated the FY 2010 budget based on the normal, everyday legal needs of the City. If something unforeseen happens that requires extensive legal support, the CAO will likely need to seek additional funding.

IV. Conclusion

As indicated above, this analysis is informational only and is intended to give the Mayor and Council an idea of what is needed, in my professional opinion, to establish an efficient and effective in-house CAO. Should the estimated FY 2010 budget for the CAO hold true, it is likely that the CAO will need to seek additional funding for contractual services to get through this transition year.

¹¹ I would anticipate that if the second assistant city attorney is not approved that the salary amount allocated for that position would be transferred to outside counsel fees. However, that amount is only approximately \$100,000 (plus benefits). At a conservative \$350/hour, that would only allow for approximately 285 hours of outside counsel support to replace 1950 hours of in-house counsel support. As such, more money would need to be added to the CAO's FY 2010 budget to cover the gap in legal support.

Fiscal Year 2007

	Venable Total Invoices	Stein Sperling	Total Legal Fees	Venable Town Center	Total Legal Fees minus Town Center
July	53,042.56		53,042.56	9,292.00	43,750.56
August	34,741.50		34,741.50	4,704	30,037.50
September	58,653.05		58,653.05	4,081.00	54,572.05
October	70,933.26		70,933.26	12,101.00	58,832.26
November	56,053.00	2,190.00	58,243.00	11,334	46,909.00
December	63,537.00	2,325.00	65,862.00	18,548	47,314.50
January	75,243.66	1,410.00	76,653.66	20,222.50	56,431.16
February	85,383.50	330	85,713.50	25,562.00	60,151.50
March	97,718.21	1,670	99,388.21	34,541.50	64,846.71
April	98,253.84	3,150	101,403.84	27,965	73,438.84
May	104,786.33	2,250.00	107,036.33	24,491.95	82,544
June	82,293.10	5,100	87,393.10	436.00	86,957.10
SubTotal	880,639.01	18425	899,064.01	193,278.45	705,785.56 *
Other costs (salaries, etc.)			226,737.00		226,737.00
Total amount for legal services			1,125,801.01		932,522.56

*The average monthly cost for legal fees for FY07 (not including any legal fees associated with the Town Center) is \$58,815.46 per month. (\$705,785.56 divided by 12 months = \$58,815.46.) It is important to note that during a portion of FY07 the OCA had an attorney on its staff that was a salaried employee.

Fiscal Year 2008

	Venable Total Invoices	Stein Sperling	Total Legal Fees	Venable Town Center	Total Legal Fees minus Town Center
July	86,875.06		86,875.06	20,002.06	66,873.00
August	85,020.19		85,020.19	21,036	63,984.11
September	89,664.32		89,664.32	3,697.50	85,966.82
October	90,848.41		90,848.41	17,778.39	73,070.02
November	91,952.44	360	92,312.44	19,877	72,435.29
December	49,933.14	3,644.63	53,577.77	10,783	42,794.27
January	97,393.07	450	97,843.07	8,903.86	88,939.21
February	51,938.23		51,938.23	4,886.02	47,052.21
March	97,043.04	1,715	98,758.04	7,060.00	91,698.04
April	128,252.78	1,715	129,967.78	15,027	114,941.28
May	73,413.55	8,150.91	81,564.46	16,063.05	65,501
June	64,942.73	12,495	77,437.73	9,159.05	68,278.68
SubTotal	1,007,276.96	28530.54	1,035,807.50	154,272.16	881,534.34 *
Other costs (salaries, etc.)			123,021.00		123,021.00
Total amount for legal services			1,158,828.50		1,004,555.34

*The average monthly cost for legal fees for FY08 (not including any legal fees associated with the Town Center) is \$73,461.20 per month.
 (\$881,534.34 divided by 12 months = \$73,461.20.)

Fiscal Year 2009 (to date)

	Venable Total Invoices	Stein Sperling	Total Legal Fees	Venable Town Center	Total Legal Fees minus Town Center
July	106,225.47	6,020	112,245.47	7,292.00	104,953.47
August	94,785.97	5,320	100,105.97	42,912	57,194.00
September	130,023.30	1,193.25	131,216.55	54,713.27	76,503.28
October	130,614.81	420	131,034.81	44,602.21	86,432.60
November	115,656.72	483	116,139.72	43,787	72,352.50
December	84,004.58		84,004.58	21,201	62,804.02
January*	223,071.81	350	223,421.81	132,275.91	91,145.90
February	71,509.60		71,509.60	1,363.10	70,146.50
March					
April					
May					
June					
SubTotal	955,892.26	13,786	969,678.51	348,146.24	621,532.27 **
Other costs (salaries, etc.)			120,812.00		120,812.00
Total amount for legal services			1,090,490.51		742,344.27

*Includes \$122,376.35 paid to Venable, LLC for expert services in connection the construction claim litigation.

**The average monthly cost for legal fees to date (not including any legal fees associated with the Town Center) is \$77,691.53 per month. (\$621,532.27 divided by 8 months = \$77,691.53.)